

OPINION
59-88

November 12, 1959 (OPINION)

EDUCATION

RE: Powers and Duties of Common School District Officers

- Reopening of School

Re: Section 15-2509, N.D.R.C. 1943 as amended by Chapter 175,

1959 Session Laws: Boone School District

This is in reply to your letter of November 4, 1959, concerning the above cited statute. You state facts as follows:

"There is a rural school in Boone Township, which shall be hereinafter referred to as school A, which has been closed for some years. The parents of six children live one and one-half miles, one and one-half miles, one mile and one-half mile, from this closed school, respectively. School B has been open and operating for many years. The distances from this school, for the parents of the six children, are four miles, four miles, two miles and one and one-half miles. The two patrons living the farthest distance have been taking their children out of the district to the City of Goodrich a distance of three and one-half miles and one and one-half miles.

"The parents of the six children have demanded that the Boone school district reopen the closed school, and the school board has refused such written demand."

Your question is: "Does the board have any choice in opening school A, especially in view of the fact that two of the patrons are within two and one-half miles of school B?"

Section 15-2509 of the 1957 Supplement of the North Dakota Revised Code of 1943, amended by Chapter 175 of the 1959 Session Laws, provides in part as follows:

"The board shall reopen any school which has been closed for lack of attendance under this section for the next ensuing term upon the written demand of the parents or guardians of six or more children of compulsory school age residing within two and one-half miles of the school. The parents or guardians of at least four such children must be residents of the district. The board may reopen such school at any time upon its own motion."

We note that the above quoted provision uses the term "shall." This is ordinarily considered to be a mandatory term and it therefore appears that if the conditions of the statute are met that the school board must open the school.

The fact that certain of the six children living within two and one-half miles of school A also live within two and one-half miles of school B which is presently operating does not appear to relieve the school board of the duty of opening school A if the statute quoted in part above is complied with. While it could be argued that since these children live within two and one-half miles of a school that is presently operating their parents or guardians have no right to petition as provided for in the statute, there is no indication of any such intent in the statute. We, therefore, believe that this situation does not affect the duty of the school board.

LESLIE R. BURGUM

Attorney General